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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

AGREED ORDER

No. DE 98HW-N108

FILE COPY

TO:

Burlington Environmental, Inc. (dba Philip Services Corp.)
Attention: Mr. Charles R. Benke, Jr.
1100 Oaksdale Ave. SW
Renton, Washington 98055

Port of Seattle
Attention: Mr. Mic Dinsmore
P.O. Box 1209
Seattle, Washington 98111

Pacific Northern Oil Corporation
Attention: Mr. George Markwood
100 West Harrison Street
Suite 200 N. Tower
Seattle, Washington 98119

USEPA RCRA



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EXHIBITS

Exhibit 1:	Port of Seattle Terminal 91 Complex
Exhibit 2:	Port of Seattle Terminal 91 Tank Farm Lease Parcel
Exhibit 3:	Public Participation Plan

1
2 I.

3 Jurisdiction

4 This Agreed Order ("Agreed Order") is issued pursuant to the authority of RCW
5 70.105D.050(1), the Model Toxics Control Act ("MTCA").

6 II.

7 Definitions

8 Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and
9 Chapter 173-340 WAC shall control the meanings of the terms used in this Agreed Order.

10 Additional definitions are as follows:

11 1. Dangerous Constituent means any constituent identified in WAC 173-303-9905
12 or 40 CFR Part 264 appendix IX, any constituent which causes a waste to be listed or
13 designated as dangerous under the provisions of Chapter 173-303 WAC, and any constituent
14 defined as a hazardous substance at RCW 70.105D.020(7).

15 2. Dangerous Waste means any solid waste designated under the procedures of
16 WAC 173-303-070 through 173-303-100 as dangerous, extremely hazardous, or mixed waste.
17 Dangerous wastes are hazardous substances under RCW 70.105D.020(7).

18 3. Dangerous Waste Constituent means any constituent listed in WAC 173-303-
19 9905 and any other constituent that has caused a waste to be a dangerous waste under Chapter
20 173-303 WAC.

21 4. Site means the Tank Farm Lease Parcel and areas where releases of dangerous
22 constituents originating from the Tank Farm Lease Parcel operations have come to be located.

1 2. The Port of Seattle, herein referred to as the "Port," is the current owner of the
2 entire Terminal 91 Complex which covers approximately 216 acres. The Tank Farm Lease
3 Parcel of the Terminal 91 Complex covers approximately 4 acres.

4 3. The Tank Farm Lease Parcel was constructed in or about 1926. The Tank Farm
5 Lease Parcel was operated by various oil companies until December 1941 when the United
6 States Navy took possession of the entire Terminal 91 Complex through condemnation. In
7 1972, the Navy declared Terminal 91 Complex as surplus. The Port began managing Terminal
8 91 Complex and in 1976 the Port reacquired the Terminal 91 Complex. Terminal 91 Complex
9 remains under the Port management at the present time.

10 4. Burlington Environmental Inc. was known as Chemical Processors, Inc.
11 ("Chempro") prior to January 1992. Since December 1993, Burlington Environmental Inc.
12 conducted business as Philip Environmental. Since June 1997, Burlington Environmental, Inc.
13 has been doing business as Philip Services Corp. Burlington Environmental Inc. and its
14 predecessors, herein will be referred to as "Philip." Philip operated the Tank Farm Lease
15 Parcel from about June 1971, when it began leasing the Tank Farm Lease Parcel from the
16 Port, through September 1995 when its occupancy ended.

17 5. Pacific Northern Oil Corporation, herein referred to as "PNO," is currently
18 operating the Tank Farm Lease Parcel under a direct leasing agreement with the Port. PNO
19 stores diesel and other petroleum products at the Tank Farm Lease Parcel.

20 6. Philip operated the Tank Farm Lease Parcel as a regulated dangerous waste
21 management facility on or after November 19, 1980, the date which subjects facilities to

1 federal RCRA permitting requirements under 40 CFR 264 and Chapter 173-303 WAC,
2 Washington's Dangerous Waste Regulations.

3 7. On November 14, 1980, Philip notified EPA of its dangerous waste
4 management activities when Philip filed its original Part A form of the RCRA permit
5 application.

6 8. Pursuant to the November 14, 1980 notification, Philip was issued identification
7 number WAD000812917 by EPA for this facility.

8 9. Philip submitted the Part B portion of the RCRA permit application to obtain a
9 final status permit for a dangerous waste treatment, storage and disposal facility on November
10 8, 1988. There were numerous revisions to the draft Part B application, but the Final Status
11 Facility Permit was issued July 22, 1992 with an effective date of August 22, 1992. Both
12 Philip and the Port are named as permittees, since the Port is owner of the property. Philip
13 ceased active operations at the permitted Tank Farm Lease Parcel in September 1995, and
14 since then has been performing closure activities. Philip operated the Tank Farm Lease Parcel
15 at the time of release of dangerous constituents.

16 10. Dangerous constituents have been detected in either soil or groundwater at the
17 Site including, but not limited to, dichlorodifluoromethane, vinyl chloride, chloroethane,
18 acetone, carbon disulfide, methylene chloride, 1,1-DCA, cis 1,2-DCE, 2-butanone,
19 chloroform, 1,1,1-TCA, carbon tetrachloride, 1,2-DCA, benzene, TCE, 1,2-dichloropropane,
20 2-chloroethylvinylether, 4-methyl-2-pentanone, toluene, 1,1,2-trichloroethane, PCE, 2-
21 hexanone, chlorobenzene, ethylbenzene, m-xylene, p-xylene, o-xylene, styrene, bromoform,
22 1,1,2,2-tetrachloroethane, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,2-dichlorobenzene,

1 naphthalene, total petroleum hydrocarbons ("TPH"), TPH for gasoline, TPH for diesel, light
2 nonaqueous-phase liquid ("LNAPL") of TPH constituents, trichlorofluoromethane, N-nitroso-
3 di-n-propylamine, isophorene, 2,4-dimethylphenol, 4-chloro-3-methyl-phenol, 2-methyl
4 naphthalene, 2-nitroaniline, dimethylphthalate, 2,6-dinitrotoluene, 1,1,2-trichloro-1,2,2
5 trifluoroethane, bis (2-chloroethoxy)methane, acenaphthene, 2,4-dinitrophenol, dibenzofuran,
6 4-nitrophenol, fluorene, 4-chlorophenyl phenyl ether, diethylphthalate, N-
7 nitrosodiphenylamine, pentachlorophenol, phenanthrene, anthracene, di-n-butylphthalate,
8 fluoranthene, pyrene, chrysene, bis(2-ethylhexyl)phthalate, di-n-octylphthalate,
9 benzo(k)fluoranthene, benzo(b)fluoranthene, 4-nitroaniline, azobenzene, 4-bromophenyl
10 phenyl ether, benzopyrene, total chromium, total mercury, total selenium, total lead, dissolved
11 lead, and dissolved zinc. The detection of these dangerous constituents is documented in
12 reports, including but not limited to the following:

- 13 A. Sweet Edwards/EMCON, December 1987, Property Transfer Assessment,
14 Chemical Processors, Inc., Pier 91 Facility, Seattle, Washington;
- 15 B. USEPA/Jacob Engineering Group Inc., April 28 1988, Draft Report, RCRA
16 Facility Assessment, Chemical Processors, Inc., Pier 91, Seattle, Washington.
- 17 C. Sweet Edwards/EMCON, May 1988, Phase 1 Hydrogeological Investigation,
18 Chemical Processors, Inc., Pier 91 Facility, Seattle, Washington;
- 19 D. Sweet Edwards/EMCON, April 24, 1989, Hydrogeological Investigation, Pier
20 91 Facility, Seattle, Washington;
- 21 E. Burlington Environmental Inc., June 15, 1994, Draft Interim Measures
22 Workplan, Burlington Environmental, Inc., Pier 91 Facility;

- 1 F. USEPA/PRC Environmental Management, Inc., November, 4, 1994, Final
2 RCRA Facility Assessment, Port of Seattle/Burlington Environmental Inc.
3 Terminal 91 Facility, Seattle, Washington;
- 4 G. Burlington Environmental Inc., February 1995, RCRA Facility Investigation
5 Draft Report, Burlington Environmental Inc., Pier 91 Facility, Seattle,
6 Washington;
- 7 H. Bimonthly Progress Reports submitted under the requirements of the EPA
8 3008(h) Agreed Order for RFI activities.
- 9 11. Dangerous constituents have been released into the environment at this Site.

10 IV.

11 Ecology Determinations

12 Ecology makes the following determinations without admission of such by the Port of
13 Seattle, Burlington Environmental, Inc. (dba Philip Services Corp.), and Pacific Northern Oil
14 Corporation:

- 15 1. The Port of Seattle is an "owner" as defined at RCW 70.105D.020(11) of a
16 "facility" as defined in RCW 70.105D.020(4).
- 17 2. Burlington Environmental, Inc. (dba Philip Services Corp.) is an "operator" as
18 defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).
- 19 3. Pacific Northern Oil Corporation is an "operator" as defined at RCW
20 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).

4. The persons identified in paragraphs 1 through 3 described above are “potentially liable persons,” herein referred to as the “PLPs,” as defined in RCW 70.105D.020(15).

5. The Site is located at 2001 West Garfield Street, Seattle, Washington.

6. Dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70.105D.020(7).

7. Based on the presence of the dangerous constituents at the Site and all factors known to Ecology, there is a release of dangerous constituents, as defined at RCW 70.105D.020(19).

8. By letters dated August 15, 1996, Ecology individually notified the PLPs of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment.

9. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of dangerous constituents, whenever it believes such action to be in the public interest.

10. Based on the foregoing facts, Ecology believes the remedial action required by this Agreed Order is in the public interest.

V.

Work to be Performed

1. Based on the foregoing Facts and Determinations, it is hereby ordered that Philip, PNO, and the Port (herein referred to as the PLPs) perform or ensure the performance

1 of the following remedial actions and that these actions be conducted in accordance with
2 Chapter 173-340 WAC (MTCA) unless otherwise specifically provided for herein. Each PLP
3 is jointly and severally liable for performing or ensuring the performance of the work and
4 obligations required under this Agreed Order.

5 2. Within one hundred eighty (180) days of the effective date of this Agreed Order,
6 the PLPs shall provide the Washington State Department of Ecology-Northwest Regional
7 Office ("Ecology-NWRO") a draft remedial investigation/data evaluation report. The primary
8 purpose of the remedial investigation/data evaluation report is to provide a comprehensive
9 report of investigative work completed to date in order to assist in preparation of the feasibility
10 study and selection of potential cleanup actions. The remedial investigation/data evaluation
11 report also will identify potential data gaps. The remedial investigation/data evaluation report
12 shall provide an evaluation of the horizontal and vertical distribution of chemicals at the Site,
13 their potential sources, and potential transport mechanisms. The remedial investigation/data
14 evaluation report is to include all existing soil, storm drain sediment, and groundwater data
15 collected through July 1997.

16 A. The groundwater presentation in the draft remedial investigation/data evaluation
17 report shall at a minimum:

- 18 i) tabulate all groundwater data collected from groundwater monitoring
19 wells at the Site showing specific groundwater monitoring well, sample
20 collection date, and constituent concentration;
21 ii) provide a summary table of well completion details for all groundwater
22 monitoring wells installed at the Site. The well completion summary

1 table shall include at a minimum, groundwater well identification,
2 installation date, surface elevation, elevation of measure point, total
3 depth, screen interval, and the geologic unit(s) in which the screen
4 interval is located. All survey information will be provided to a common
5 datum;

6 iii) provide a summary table of all groundwater elevation data collected from
7 groundwater monitoring wells at the Site. All groundwater elevation
8 data shall be to a common datum. The table will include groundwater
9 well identification, elevation of measuring point, depth to groundwater,
10 elevation of the groundwater surface corrected for LNAPL
11 accumulations (if applicable), and provide an indication of whether the
12 well is screened in the shallow or deep aquifer;

13 iv) include groundwater data (for representative indicator chemical
14 constituents) presented as concentration vs time graphs for representative
15 groundwater monitoring wells which shows, at a minimum, analytical
16 detection limits, the chemical constituent concentrations, sample
17 collection dates, and reference marks indicating when dedicated sampling
18 systems were installed.

19 v) construct quarterly isopleth maps for representative indicator chemical
20 constituents using the last eight quarters of data ending with the July
21 1997 sampling event;

- 1 vi) construct quarterly isopach maps for the LNAPL for the last five years
2 of data ending with the July 1997 sampling event, using thickness
3 correction factors calculated from historic Site baildown tests to correct
4 for apparent LNAPL thickness observed in wells;
- 5 vii) construct hydrographs for representative groundwater monitoring wells
6 showing date of measurement and groundwater elevation referenced to a
7 common datum;
- 8 viii) graph monthly precipitation data from precipitation data for the Site or
9 from the closest rain gauge monitoring station to the Site;
- 10 ix) construct groundwater flow maps using the last eight quarters of data
11 ending with the July 1997 sampling event, using data collected from the
12 shallow aquifer beneath the Site;
- 13 x) provide hydraulic conductivity evaluations including estimated aquifer
14 hydraulic parameters, and the directions and rates of groundwater flow
15 (including the methods used for the analysis);
- 16 xi) provide an analysis of the results of tidal monitoring studies performed
17 on groundwater monitoring wells screened in the deep aquifer beneath
18 the Site along with the methods used for performing these analyses; and
- 19 xii) provide estimations of the directions and rates of contaminant transport
20 and the methods used for assessing these parameters.

21 B. The soils presentation in the draft remedial investigation/data evaluation report
22 shall at a minimum:

- 1 i) tabulate all soils and storm drain data showing, at a minimum: boring
2 identification or storm drain location, sample collection date, sampling
3 depth, analytical detection limits, and constituent concentrations;
4 ii) construct isopleth maps for representative indicator chemical constituents
5 at various depths; and
6 iii) provide geologic logs for all wells and borings installed at the Site.

7 C. The draft remedial investigation/data evaluation report shall analyze all existing
8 groundwater, soil and storm drain sediment data.

- 9 i) Groundwater analysis shall include, at a minimum, the seasonal effects
10 on groundwater data, the sources of plumes, the comparison of water
11 quality information before and after the installation of dedicated sampling
12 systems, effects of detection limits on the analyses, impacts of Interim
13 Measures on the LNAPL plume(s) and thickness of layer, constituents at
14 the Site, and estimates of the rate of transport (include method or model
15 for determination).
16 ii) Soils and storm drain sediment analysis shall include the effect of the
17 detection limits on the analysis.

18 D. The remedial investigation/data evaluation report shall include a minimum of
19 four (4) cross-sections using a common survey datum. Each cross-section shall
20 include, at a minimum, subsurface stratigraphy and hydrostratigraphy, total
21 depth of well or boring, screen interval, groundwater elevation, and soil
22 classification using the Unified Soils Classification system ("USCS").

1 E. The remedial investigation/data evaluation report shall include a Site plan map
2 with boring and groundwater monitoring well locations.

3 F. The remedial investigation/data evaluation report shall include any revisions to
4 the present conceptual model and will identify potential data gaps.

5 G. The remedial investigation/data evaluation report will include a copy of the
6 existing sampling and analysis plan as amended, provide an assessment of
7 current quarterly monitoring requirements as set forth in Section V.4 and
8 recommendations for modifications, if indicated.

9 3. Submit a final remedial investigation/data evaluation report sixty (60) days after
10 receiving comments from Ecology on the draft report.

11 4. If data gaps exist, then either Ecology or the PLPs may propose Additional
12 Work to fill the data gaps under provision Section VII.6 of this Agreed Order.

13 5. The PLPs shall continue the quarterly monitoring program currently being
14 performed by Philip. This quarterly monitoring program was approved by the EPA in a letter
15 to Philip dated December 15, 1995, and was described in a letter to Philip from Ecology dated
16 December 13, 1995. Ecology's letter was provided as an attachment to EPA's letter.

17 6. Within sixty (60) days after receiving written Ecology approval of the final
18 remedial investigation/data evaluation and any data gap report(s), the PLPs shall submit to
19 Ecology NWRO a draft Feasibility Study (FS) workplan. The draft FS workplan shall be
20 written in accordance with WAC 173-340-350 and contain, at a minimum, methods for
21 evaluating the technical, environmental, human health and financial costs associated with each

1 remedial option. The FS workplan shall contain a time schedule for completing the FS
2 activities.

3 7. Within forty-five (45) days after receiving Ecology comments on the draft FS
4 workplan, the PLPs shall revise the draft FS workplan and submit a final FS workplan to
5 Ecology NWRO for final written approval. After receiving final written approval from
6 Ecology, the PLPs shall immediately begin implementation of the final Ecology approved FS
7 workplan.

8 8. Upon completion of the work described in the final Ecology-approved FS
9 workplan, the PLPs shall submit to Ecology-NWRO a draft FS report as provided in the
10 approved FS workplan schedule.

11 9. After Ecology review and approval of the final FS report, and if required by
12 Ecology, the PLPs shall submit a draft cleanup action plan ("DCAP") to Ecology-NWRO
13 within ninety (90) days of receipt of formal notification of such requirement by letter. The
14 notification shall identify the cleanup alternative preliminarily chosen by Ecology. The DCAP
15 shall meet the requirements of WAC 173-340-360, -400(1) through (7), -410, as well as WAC
16 173-303-646.

17 10. The performance of any work described in any DCAP required by Ecology shall
18 be the subject of an amendment to the Agreed Order or a new Agreed Order or Consent
19 Decree.

20 11. The PLPs shall follow the reporting guidelines in WAC 173-340-840 for all
21 parts of this Agreed Order unless otherwise agreed to by both Ecology and the PLPs. All data
22 generated pursuant to this Agreed Order shall be submitted to Ecology-NWRO, including all

1 outlier and duplicate data. In addition, all groundwater, sediment, surface water, and soil data
2 generated pursuant to this Agreed Order shall be submitted to Ecology-NWRO as copies of the
3 original reported laboratory data sheets, in tabulated data format and in an electronic format
4 approved by Ecology for all referenced environmental media. Laboratory detection limits and
5 practical quantitation limits shall be reported for each constituent concentration detected.

6 12. The PLPs shall submit status reports to Ecology-NWRO quarterly, starting from
7 the effective date of this Agreed Order and continuing until all of the requirements of this
8 Agreed Order are completed to Ecology's satisfaction. The submittal shall be due on the 20th
9 day of the month following the three-month activity period. The PLPs shall include the
10 following in each status report:

- 11 A. all work conducted pursuant to this Agreed Order during the last three month
12 period;
- 13 B. occurrence of any problems, how problems were rectified, deviations from the
14 workplans and an explanation of all deviations;
- 15 C. projected work to occur in the upcoming three months;
- 16 D. summaries of significant findings, changes in personnel, summaries of
17 significant contacts with all federal, state, local community, and public interest
18 groups;
- 19 E. all laboratory analyses (as copies of the original laboratory reporting data sheets,
20 in tabulated data format) for which quality assurance procedures are completed
21 during the three month period;
- 22 F. all field measurements;

- 1 G. tabulations of that quarterly groundwater data showing specific groundwater
2 monitoring well, sample collection date, and constituent concentration;
3 H. groundwater contour maps for the shallow aquifer for that quarterly sampling
4 event; and
5 I. an isopach map for the LNAPL for that quarterly sampling event, using results
6 of Site baildown tests to correct for apparent LNAPL thickness observed in
7 wells.

8 13. Annually, the PLPs shall submit a groundwater data analysis report to Ecology-
9 NWRO. The first annual report will be due to Ecology 14 months after the effective date of
10 this Agreed Order. The annual groundwater data analysis report shall at a minimum:

- 11 A. present analytical data for groundwater monitoring wells using tables (for all
12 data and summary) and graphs (for representative groundwater monitoring wells
13 and chemical constituents);
14 B. construct hydrographs for representative groundwater monitoring well showing
15 date of measurement and groundwater elevation;
16 C. graph monthly precipitation data from the Site or from the closest rain gauge
17 monitoring station to the Site; and
18 D. evaluate the seasonal effects on the groundwater data, contaminant plume
19 characteristics, impacts of Interim Measures on the LNAPL, constituents that
20 are migrating from the Site, an estimate of the rate of transport, and any
21 revisions to the conceptual model.

14. By February 15 of each year, the PLPs shall submit to Ecology-NWRO the number of pounds of contaminant stabilized, treated, or removed, the volume of contaminated media remediated or contained and the area of land returned to appropriate use (in acres) from the implementation of Interim Measures in a format approved by Ecology.

15. If both Ecology and the PLPs agree that such a change is necessary, the frequency of progress report submittals may be revised. This is an example of a minor modification that requires the signature of both Ecology and the PLPs but no public comment.

16. The PLPs shall notify Ecology's project manager in writing of newly-discovered releases of hazardous substances as defined in Chapter 173-340 WAC at the Site no later than fifteen (15) days after discovery. Additional activities to address new discoveries are subject to the Additional Work provisions of Section VII.6.

VI.

Incorporation of Exhibits

Exhibits 1, 2, and 3 are hereby incorporated into this Agreed Order by reference and are integral and enforceable parts of this Agreed Order.

VII.

Terms and Conditions of Agreed Order

1. Public Notices. WAC 173-340-600(10)(c) requires a thirty (30) day public comment period before this Agreed Order becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Agreed Order should public comment disclose facts or considerations which indicate to Ecology that the Agreed Order is inadequate or improper in any respect.

1 2. Remedial Action Costs. The PLPs shall pay to Ecology costs incurred by
2 Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology
3 or its contractors for investigations, remedial actions, and Agreed Order preparation, oversight
4 and administration. Ecology costs shall include costs of direct activities and support costs of
5 direct activities as defined in WAC 173-340-550(2). The PLPs shall pay the required amount
6 within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
7 summary of costs incurred, an identification of involved staff, and the amount of time spent by
8 involved staff members on the project. A general description of work performed will be
9 provided upon request. Itemized statements shall be prepared quarterly. Failure to pay
10 Ecology's costs within 90 days of receipt of the itemized statement of costs will result in
11 interest charges at the rate of twelve (12) percent per annum.

12 3. Designated Project Managers. The project manager for Ecology is:

13 Name: Sally Safioles

14 Address: Department of Ecology-NWRO

15 160th Avenue S.E.

16 Bellevue, Washington 98008-5452

17 Phone: Sally Safioles: (425) 649-7026

18 FAX: (425) 649-7098

1
2 The project manager for the PLPs is:

3 Name: Susan Roth

4 Address: Roth Consulting

5 6236 27th Ave. N.E.

6 Seattle, Washington 98115-7114

7 Phone: (206) 526-8494

8 FAX: (206) 522-2546

9 The project managers shall be responsible for overseeing the implementation of this
10 Agreed Order. To the maximum extent possible, communications between Ecology and the
11 PLPs, and all documents, including reports, approvals, and other correspondence concerning
12 the activities performed pursuant to the terms and conditions of this Agreed Order, shall be
13 directed through the project managers. Should Ecology or the PLPs change project managers,
14 written notification shall be provided to Ecology or the PLPs at least ten (10) days prior to the
15 change.

16 4. Submittals. Once approved in writing by Ecology, all submittals to Ecology are
17 incorporated by reference and become enforceable parts of this Agreed Order, as if fully set
18 forth herein.

19 During the performance of work under an approved submittal, field modifications to the
20 submittal may be agreed to verbally by the Project Managers. In such case, the PLPs shall
21 submit a description of the modification to Ecology's Project Manager in writing within seven

1 (7) days after the verbal agreement, and Ecology's Project Manager shall provide written
2 confirmation of the agreed modification.

3 If following submission of a draft submittal, the PLPs disagree with or have questions
4 concerning Ecology's comments and/or required modifications, the PLPs, within five (5) days
5 after receipt of Ecology's comments and/or required modifications, may in writing request a
6 meeting or telephone conference with Ecology's Project Manager to resolve the matter.
7 Ecology's receipt of such written request will begin a twenty (20) day informal dispute
8 resolution period. The written request shall include a statement of the issue(s) the PLPs wish
9 to address.

10 The twenty (20) day informal resolution period shall extend the due date for
11 resubmittal. If agreement is reached within the informal resolution period, the PLPs shall
12 incorporate into a revised submittal the agreed-upon comments and/or modifications within
13 thirty (30) days after reaching agreement, unless a longer time is specified by Ecology. If
14 agreement is not reached within the informal resolution period, Ecology shall send a written
15 letter of disapproval to the PLPs. Within thirty (30) days of receipt of the written disapproval
16 letter, the PLPs shall submit a revised, final draft submittal which incorporates all Ecology's
17 comments or required modifications. In lieu of, or after this informal dispute resolution
18 process, the PLPs may also invoke the dispute resolution procedures in Section VII.10 of this
19 Agreed Order for all comments and/or required modifications the PLPs wish to challenge.

20 5. Performance. All work performed pursuant to this Agreed Order shall be under
21 the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or
22 similar expert, with appropriate training, experience and expertise in dangerous waste site

1 investigation and cleanup. The PLPs shall notify Ecology as to the identity of such
2 engineer(s), hydrogeologist(s) or similar expert(s), and of any contractors and subcontractors
3 to be used in carrying out the terms of this Agreed Order, in advance of their involvement at
4 the Site. The PLPs shall provide a copy of this Agreed Order to all agents, contractors and
5 subcontractors retained to perform work required by this Agreed Order and shall ensure that
6 all work undertaken by such agents, contractors and subcontractors will be in compliance with
7 this Agreed Order.

8 Except where necessary to abate an emergency situation, the PLPs shall not perform
9 any remedial actions at the Site other than those required by this Agreed Order unless Ecology
10 concurs, in writing, with such additional remedial actions.

11 6. Additional Work. Ecology may determine or the PLPs may propose that
12 Additional Work is or may be necessary to implement this Agreed Order. If the Additional
13 Work is proposed by the PLPs, Ecology will respond to the proposal in writing within an
14 appropriate time period, no longer than thirty (30) days. If the Additional Work is required by
15 Ecology, then Ecology will specify in writing the basis for its determination that the Additional
16 Work is necessary. Within fifteen (15) days after the receipt of such written determination, the
17 PLPs shall notify Ecology of their willingness to perform the Additional Work or may request
18 a meeting with Ecology to discuss the Additional Work. If the PLPs are willing to perform the
19 Additional Work, the PLPs shall submit a Workplan for Ecology review incorporating the
20 Additional Work within thirty (30) days (or more, if approved by Ecology) after either
21 submitting notice of their willingness to perform or the date of the meeting with Ecology, as
22 applicable. The Workplan shall be subject to the procedures set forth in Section VII.4. Upon

1 written approval of the Workplan, the PLPs shall implement the Workplan in accordance with
2 the schedule contained therein.

3 7. Access. Ecology or any Ecology authorized representative shall have the
4 authority to enter and freely move about the Site at all reasonable times for the purposes of,
5 inter alia: inspecting records, operation logs, and contracts related to the work being
6 performed pursuant to this Agreed Order; reviewing the progress in carrying out the terms of
7 this Agreed Order; conducting such tests or collecting samples as Ecology or the project
8 manager may deem necessary; using a camera, sound recording, or other documentary type
9 equipment to record work done pursuant to this Agreed Order; and verifying the data
10 submitted to Ecology by the PLPs. By signing this Agreed Order, the PLPs agree that this
11 Agreed Order constitutes reasonable notice of access, and agree to allow access to the Site at
12 all reasonable times for purposes of overseeing work performed under this Agreed Order.
13 Ecology shall allow split or replicate samples to be taken by the PLPs during an inspection
14 unless doing so interferes with Ecology's sampling. The PLPs shall allow split or replicate
15 samples to be taken by Ecology and shall provide seven (7) days notice before any sampling
16 activity.

17 8. Public Participation. The PLPs shall prepare and/or update a public
18 participation plan for the Site, Exhibit 3 to this Agreed Order. Ecology shall maintain the
19 responsibility for public participation at the Site. The PLPs shall help coordinate and
20 implement public participation for the Site.

21 9. Retention of Records. The PLPs shall preserve in a readily retrievable fashion,
22 during the pendency of this Agreed Order and for ten (10) years from the date of completion of

1 the work performed pursuant to this Agreed Order, all records, reports, documents, and
2 underlying data in its possession relevant to this Agreed Order. Should any portion of the
3 work performed hereunder be undertaken through contractors or agents of the PLPs, then the
4 PLPs agree to include in their contract with such contractors or agents a record retention
5 requirement meeting the terms of this paragraph.

6 10. Dispute Resolution. The PLPs may request Ecology to resolve disputes which
7 may arise during the implementation of this Agreed Order. Such request shall be in writing
8 and directed to the signatory, or his/her successor(s), to this Agreed Order. Ecology
9 resolution of the dispute shall be binding and final. The PLPs are not relieved of any
10 requirement of this Agreed Order during the pendency of the dispute and remain responsible
11 for timely compliance with the terms of the Agreed Order unless otherwise provided by
12 Ecology in writing.

13 11. Reservation of Rights/No Settlement. This Agreed Order is not a settlement
14 under Chapter 70.105D RCW. Ecology's signature on this Agreed Order in no way
15 constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology
16 will not, however, bring an action against the PLPs to recover remedial action costs paid to
17 and received by Ecology under this Agreed Order. In addition, Ecology will not take
18 additional enforcement actions against the PLPs to require those remedial actions required by
19 this Agreed Order, provided the PLPs comply with this Agreed Order.
20 Ecology reserves the right, however, to require additional remedial actions at the Site should it
21 deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of dangerous constituents from the Site.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order the PLPs to stop further implementation of this Agreed Order for such period of time as needed to abate the danger.

12. Transference of Property. Prior to any voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site, the PLPs shall provide for continued implementation of all requirements of this Agreed Order and implementation of any remedial actions found to be necessary as a result of this Agreed Order.

Prior to transfer of any legal or equitable interest the PLPs may have in the Site or any portions thereof, the PLPs shall serve a copy of this Agreed Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the PLPs shall notify Ecology of the contemplated transfer.

13. Compliance with Other Applicable Laws.

A. All actions carried out by the PLPs pursuant to this Agreed Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

1 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters
2 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring
3 or authorizing local government permits or approvals for the remedial action
4 under this Agreed Order that are known to be applicable at the time of issuance
5 of the Agreed Order are to be included in this Agreed Order. Ecology was not
6 aware of any such substantive requirements at the time of issuance of this
7 Agreed Order.

8 The PLPs have a continuing obligation to determine whether additional permits
9 or approvals addressed in RCW 70.105D.090(1) would otherwise be required
10 for the remedial action under this Agreed Order. In the event the PLPs
11 determine that additional permits or approvals addressed in RCW
12 70.105D.090(1) would otherwise be required for the remedial action under this
13 Agreed Order, they shall promptly notify Ecology of this determination.

14 Ecology shall determine whether Ecology or the PLPs shall be responsible to
15 contact the appropriate state and/or local agencies. If Ecology so requires, the
16 PLPs shall promptly consult with the appropriate state and/or local agencies and
17 provide Ecology with written documentation from those agencies of the
18 substantive requirements those agencies believe are applicable to the remedial
19 action. Ecology shall make the final determination on the additional substantive
20 requirements that must be met by the PLPs and on how the PLPs must meet
21 those requirements. Ecology shall inform the PLPs in writing of these
22 requirements. Once established by Ecology, the additional requirements shall

1 be enforceable requirements of this Agreed Order. The PLPs shall not begin or
2 continue the remedial action potentially subject to the additional requirements
3 until Ecology makes its final determination.

4 Ecology shall ensure that notice and opportunity for comment is provided to the
5 public and appropriate agencies prior to establishing the substantive
6 requirements under this section.

7 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
8 exemption from complying with the procedural requirements of the laws
9 referenced in RCW 70.105D.090(1) would result in the loss of approval from a
10 federal agency which is necessary for the State to administer any federal law,
11 the exemption shall not apply and the PLPs shall comply with both the
12 procedural and substantive requirements of the laws referenced in RCW
13 70.105D.090(1), including any requirements to obtain permits.

14 VIII.

15 Satisfaction of this Agreed Order

16 The provisions of this Agreed Order shall be deemed satisfied upon the PLPs' receipt
17 of written notification from Ecology that the PLPs have completed the remedial activity
18 required by this Agreed Order, as amended by any modifications, and that all other provisions
19 of this Agreed Order have been complied with.

IX.

Enforcement

1. Pursuant to RCW 70.105D.050, this Agreed Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Agreed Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Agreed Order, the PLPs will be liable for:

i) up to three times the amount of any costs incurred by the state of Washington as a result of the PLPs' refusal to comply; and

ii) civil penalties of up to \$25,000 per day for each day the PLPs refuse to comply.

D. This Agreed Order is not appealable to the Washington Pollution Control Hearings Board. This Agreed Order may be reviewed only as provided under RCW 70.105D.060.

1

2 Effective date of this Agreed Order: _____

3 PORT OF SEATTLE

STATE OF WASHINGTON

4

DEPARTMENT OF ECOLOGY

5

6

7 By _____

By _____

8 Mic Dinsmore

Julie Sellick

9

Section Supervisor

10

Hazardous Waste and Toxics Reduction

11

Northwest Regional Office

12

13 BURLINGTON ENVIRONMENTAL, INC. (dba PHILIP SERVICES CORP.)

14

15

16 By _____

17 Charles R. Benke, Jr.

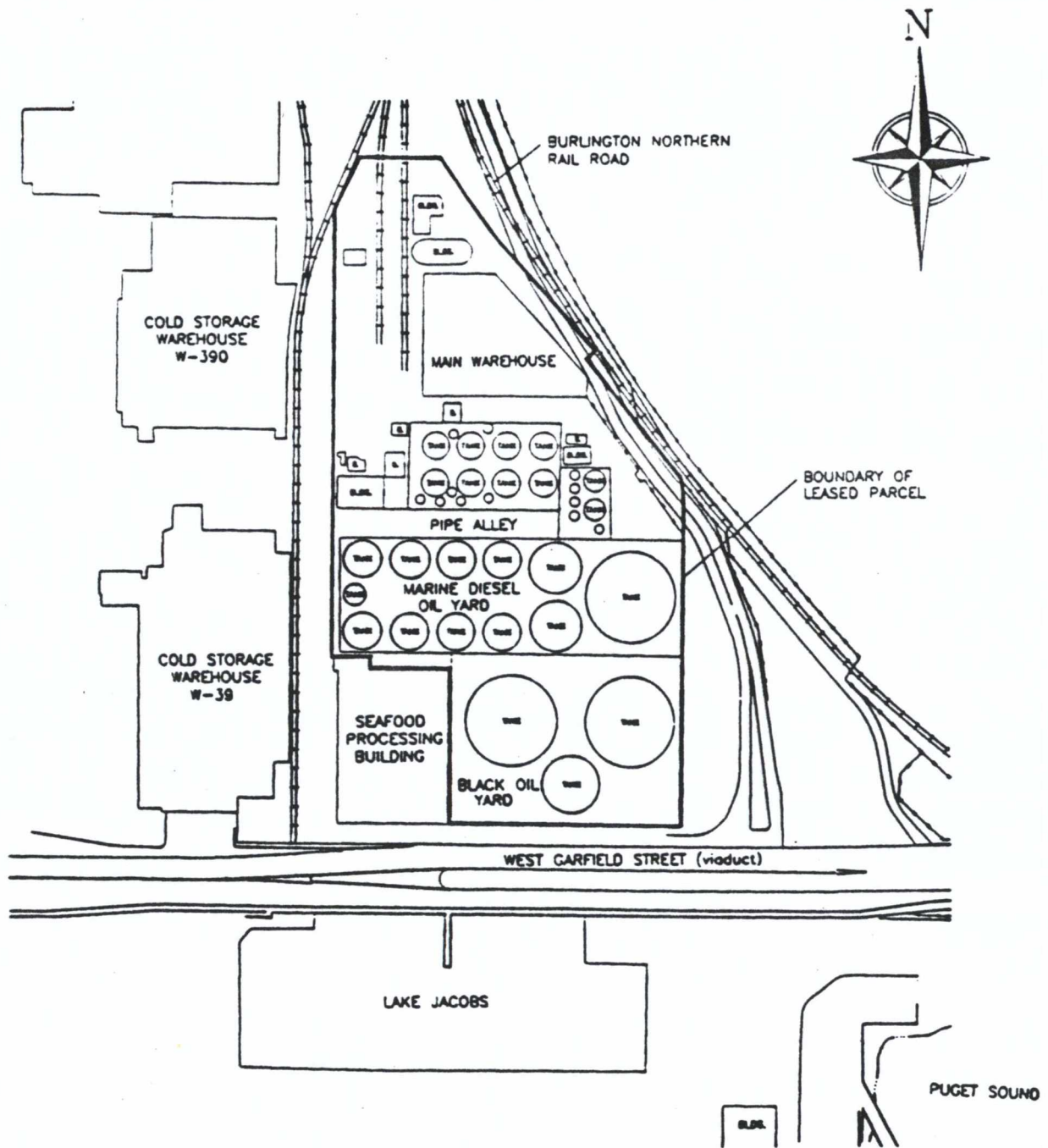
18 PACIFIC NORTHERN OIL CORPORATION

19

20

21 By _____

22 George Markwood



SCALE 1" = 150'

All locations shown are approximate.

EXHIBIT 2
Port of Seattle Terminal 91
Tank Farm Lease Parcel

Exhibit 3

Terminal 91 Tank Farm Site Remedial Investigation and Feasibility Study and Permit Modification

Public Participation Plan

Prepared By:

The Washington Department of Ecology
Philip Services Corp.
The Port of Seattle
Pacific Northern Oil Corporation

January 1998

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1.0 Introduction

Overview

Burlington Environmental, Inc. dba Philip Services Corp. (Philip), the Port of Seattle (the Port), and Pacific Northern Oil Corporation (PNO) have been identified as potentially liable persons (PLPs) for the Terminal 91 Tank Farm Site (tank farm site) in Seattle. The Washington State Department of Ecology (Ecology) and the PLPs are proposing to enter into a voluntary Agreed Order under the Model Toxics Control Act (MTCA), Washington's hazardous waste cleanup law. The Agreed Order would be a formal legal agreement which, in this case, would call for the PLPs to prepare a remedial investigation (RI) and data evaluation report and perform a feasibility study (FS) at the tank farm site.

The tank farm site is located at the north end of Elliott Bay at 2001 West Garfield Street within the Terminal 91 Complex in Seattle, Washington. The tank farm was constructed in 1926 as part of a petroleum refinery. The tank farm was owned and/or operated by various oil companies through 1941. In 1942, the U.S. Navy acquired the entire Terminal 91 property from the Port and other parties through condemnation. The U.S. Navy owned and operated the tank farm until 1971. In June 1971, Philip (formerly known as Chemical Processors, Inc. or Chempro) began leasing and operating the tank farm as an oil and wastewater processing facility. From 1974 to 1981, oil owned by PNO was stored at the tank farm under a throughput agreement with Philip. In 1976, the Port reacquired the entire Terminal 91 property from the U.S. Navy and continued to lease the tank farm to Philip.

Philip operated the tank farm as a dangerous waste management facility on or after November 19, 1980, the date that subjected facilities to federal RCRA permitting requirements under 40 Code of Federal Regulations (CFR) 264 and state requirements under Washington Administrative Code (WAC) Chapter 173-303, the Dangerous Waste Regulations. In 1981, Philip subleased a portion of the tank farm to PNO for storage and

blending of diesel and other fuel oils. Philip ceased operations at the tank farm in September 1995. Since that time, Philip has been performing closure activities that include decontamination of tanks and concrete surfaces, and collection of samples to verify that the surfaces have been decontaminated. PNO now operates the tank farm under a lease directly from the Port.

Historically, hazardous substances including petroleum products were released to soil and groundwater at the tank farm site. These substances were released primarily from aboveground storage tanks, fuel distribution piping systems, and other activities associated with historical operations at the site. These activities have included storage of petroleum products and treatment and storage of dangerous waste. Soil and groundwater investigations performed over the past ten years have been documented in reports that have been submitted to Ecology and the U.S. Environmental Protection Agency (EPA).

The petroleum products and dangerous constituents released at the tank farm are considered hazardous substances under MTCA. Extensive environmental investigations, and other cleanup activities including closure, have already been performed at the site under EPA and Ecology oversight over the past ten years as part of the ongoing RCRA process. In addition, quarterly groundwater monitoring currently is being performed. The proposed MTCA Agreed Order would transfer the site cleanup from EPA oversight to Ecology oversight to fulfill RCRA corrective action using the the MTCA process. The remedial investigation/data evaluation report to be prepared under the proposed Agreed Order would evaluate where chemicals of concern have been detected in soil and groundwater at the tank farm site, the potential sources of these chemicals, and their potential transport mechanisms. This report would primarily evaluate existing data generated during investigations performed at the site over the past ten years and identify potential data gaps. The findings discussed in the remedial investigation/ data evaluation report would be used to assist in preparation of a feasibility study and selection of potential cleanup actions at the tank farm site.

Public Participation Commitments for the Model Toxics Control Act and Resource Conservation and Recovery Act

MTCA emphasizes public participation throughout the cleanup process. Neighboring residents, businesses and other interested parties are given the opportunity to provide input regarding cleanup decisions. MTCA regulations require "the early planning and development of a site-specific public participation plan." The plan must include public notices and solicitation of public comments, and may also include announcement of the availability of reports and studies for the site.

WAC Section 173-340-600 sets forth provisions for public participation under MTCA. In addition, WAC 173-340-530 (6) includes a provision for appropriate public participation opportunities when an Agreed Order is in place for a designated hazardous waste site. WAC 173-303-830 and -840 provides requirements for public participation activities when a dangerous waste permit modification is proposed.

This plan describes public participation activities for the proposed voluntary Agreed Order for a remedial investigation/data evaluation report and a feasibility study, and permit modification at the Terminal 91 Tank Farm Site.

Participants in this Plan

Philip, the Port, and PNO have been identified by Ecology as PLPs for the tank farm site. The PLPs and Ecology are proposing to enter into a voluntary legal agreement called an Agreed Order, which outlines the work required of the PLPs and describes how Ecology and the PLPs will work together. Ecology's role is to oversee the PLPs' work to ensure that the requirements of the Agreed Order and MTCA are met and to ensure that the public participation activities detailed in this plan are carried out. The PLPs' role is to carry out the tasks specified in the Agreed Order and to assist as needed in public

participation activities. Under RCRA, there is an additional requirement to modify the existing dangerous waste permit. This permit only applies to the Port and Philip.

Goal of this Public Participation Plan

MTCA states that public participation plans are intended to encourage a coordinated and effective public involvement tailored to the public's needs at a particular facility. The goals of this plan are:

- To identify people and organizations with an interest or potential interest in the tank farm site RI/FS processes and findings.
- To identify community concerns related to the RI/FS and ways to address those concerns.
- To promote public understanding of the proposed voluntary Agreed Order and RI/FS process and findings.
- To aid communication and to encourage interaction and collaboration among Ecology, the PLPs, and the community.
- To meet the public participation requirements under MTCA and the Dangerous Waste Regulations [WAC 173-340-530 (6), WAC 173-340-600, WAC 173-303-830 and WAC 173-303-840].

2.0 The Public Participation Process at the Tank Farm Site

MTCA calls for public participation at important milestones in the investigation and cleanup process. The public must be provided an opportunity to comment before Ecology can give final approval for most key site decisions.

This Public Participation Plan describes the activities planned for the scope of work described in the proposed Agreed Order. Public participation activities for any additional phases will be identified later through an amendment to this plan or through the development of a new plan.

Roles and Responsibilities

In accordance with MTCA requirements, Ecology retains overall responsibility and approval authority for public participation activities for this project. Ecology, with assistance from the PLPs, will conduct activities related to formal public notice and comment periods, including soliciting, receiving and considering comments, making final decisions, and preparing summaries of the public's comments and Ecology's responses to those comments.

Points of Contact

The following people will be the primary points of contact for the general public and media and for coordinating project-related public participation activities:

Ecology:

Sally Safioles
Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452
(206) 649-7026

PLPs:

Rosie Courtney
Port of Seattle
P.O. Box 1209
Seattle, WA 98111
(206) 728-3414

Required Activities

The required public participation activities for this project are as follows. Ecology is the lead for these activities; the PLPs will assist as needed:

1. **A 45-day public comment period** will be scheduled for the proposed voluntary Agreed Order and permit modification from **November 5 through December 19, 1997.**

2. **Formal public notice** for the comment period will include the following:
 - a. A mailed **fact sheet** summarizing the Agreed Order and related activities and inviting the public to comment. This fact sheet will be mailed to individuals on a mailing list developed jointly by Ecology and the PLPs (see description below).
 - b. **Legal Notices** announcing the comment period will be placed in the Seattle Times and the Queen Anne/Magnolia News.
 - c. A **notice** will be published in Ecology's Site Register.
 - d. A **public hearing** will be scheduled to discuss the proposed action if significant public interest is expressed. Written notice of opposition and written requests for a public hearing must be submitted prior to the end of the public comment period. Any request for a hearing must be accompanied by a basis for such a request and a discussion of topics to be raised in a public hearing.
 - e. a **local radio broadcast** of the public notice

Supporting tasks related to the above required activities include:

Mailing List. Ecology and the PLPs will work together to compile a comprehensive mailing list for the project, and Ecology will maintain and update the mailing list. The list will include at a minimum, individuals, groups, public agencies, elected officials and private firms with a known interest in the site, appropriate media, as well as anyone who requests to receive site-related mailings. The list will be maintained by Ecology with a current copy provided to the PLPs as requested. This list will be updated as needed by Ecology.

Public Hearings or Meetings. If public hearings or meeting are held, Ecology will schedule an appropriate time and secure a meeting place. Ecology will provide public notice of the hearing or meeting and provide a record or transcript of the formal comments made at the hearing or meeting. Ecology will provide the record or transcripts to the PLPs. If necessary, the PLPs will cooperate with Ecology and assist by providing descriptive materials and personnel as needed for required public hearings or meetings.

When such assistance is needed, Ecology will give the PLPs advance notice in order to schedule and prepare for the meeting.

Information Repositories. Information repositories will be established for the public to access documents pertaining to site activities. Information placed at the repositories will include all site related documents requiring a comment period (the Agreed Order, for example). The following are the repositories for the tank farm site:

Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Attention: Sally Perkins
(425) 649-7190

Seattle Public Library--Downtown (Central)
(4th and Madison)
1000 4th Avenue
Seattle, WA 98104-1193
(206) 386-4636

Seattle Public Library--Queen Anne
400 W. Garfield St.
Seattle, WA 98119
(206) 386-4227

Seattle Public Library--Magnolia
2801 34th Ave. W
Seattle, WA 98199
(206) 386-4225

The complete permit and other historical site files are available for review at Ecology's Northwest Regional Office by appointment at the above number. For special accommodations or language translation assistance call Sally Safioles at (425) 649-7026 or (425) 649-4259 (TDD). Ecology is an affirmative action and equal opportunity employer.

Responsiveness Summaries. Comments received during the public comment periods will be retained in the site files at Ecology with copies provided to the PLPs. Responses to comments received during the public comment periods will be compiled in a responsiveness summary prepared by Ecology. A draft responsiveness summary will be provided to the PLPs for review and comment. Ecology may modify the responsiveness summary based on the PLPs' comments. The final responsiveness summary will be sent to those who submitted written and/or oral comments and to the information repository. Notice of the availability of the summary will be printed in Ecology's Site Register.

Updates to the Public Participation Plan

This plan will be updated at each phase of cleanup activity for this site. The next scheduled update will occur when and if cleanup actions are chosen for this site.


3.0 Community Concerns


To date, there has been little expression of public interest or concern about the tank farm site. The drafting and activation of this public participation plan may lead to an increase in such interest, and the plan is being drafted to anticipate and answer the needs of the public for information, and to ensure that the public has the opportunity to participate in the cleanup process to be undertaken at the tank farm site in accordance with the requirements of MTCA and the Dangerous Waste Regulations.

HAZARDOUS WASTE & TOXICS REDUCTION PROGRAM

SITE NAME	POS – Terminal 91	MONTH	January	YEAR	1998
NAME	Galen H. Tritt	PAYROLL	1-15_x____Both	PERIOD	16-31
PIC	M1340	WAD #	000812917		
PROJECT #	POS T-91				

- **VCP** – Voluntary cleanup program

EMPLOYEE'S SIGNATURE 	(Galen Tritt)	DATE January 30, 1998
DATA ON THIS FORM IS IN AGREEMENT WITH THE EMPLOYEE'S TIMESHEETS		
SUPERVISOR'S SIGNATURE	(Sally Saffioles)	DATE

EMPLOYEE'S SIGNATURE  (Galen Tritt)		DATE January 30, 1998
DATA ON THIS FORM IS IN AGREEMENT WITH THE EMPLOYEE'S TIMESHEETS		
SUPERVISOR'S SIGNATURE _____ (Sally Saffioles)		DATE _____

Ecology (h) order is 4 acres

Galen

- Why is boundary the way it is
- How was decision made by Port in future too innovative

EPA

- 3008(h) importance boundary issue
- learning process / adm. action
- creative

Galen - We are bad guys - negotiate a new order